

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MELVIN GAMAGE, JR., #56705

PETITIONER

VERSUS

CIVIL ACTION NO. 1:05cv432LG-RHW

RONALD KING

RESPONDENT

OPINION AND ORDER

This matter comes before this Court, *sua sponte*, for consideration of dismissal.

Petitioner Melvin Gamage, Jr., was convicted on December 5, 1984, in the Circuit Court of Harrison County, Mississippi, of burglary of an automobile. The petitioner was sentenced to life without the chance for probation or parole. The instant petition marks the Petitioner's third attempt to challenge his 1984 conviction.

DISCUSSION

The petitioner filed for habeas corpus relief in civil action number 1:95cv383BrG challenging the 1984 conviction. The State of Mississippi filed an answer and a copy of the state court record. On July 19, 1999, a judgment was entered by this Court dismissing civil action number 1:95cv383BrG. The petitioner filed a second petition for habeas relief challenging the 1984 conviction in civil action number 1:99cv264RG. On September 16, 1999, this Court entered an order transferring that civil action to the United States Court of Appeals for the Fifth Circuit, appeal number 99-607338, for a determination whether the successive petition should be allowed. *See In Re Epps*, 127 F.3d 364 (5th Cir. 1997). The Fifth Circuit did not authorize this court to consider the petitioner's successive petition.

28 U.S.C. § 2244(b)(1) provides that a “claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.” 28 U.S.C. § 2244(b)(3)(A) provides that “before a second or successive application...is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” Petitioner has filed two prior habeas corpus petitions attacking his 1984 state court conviction. Thus, the instant petition is successive.¹ Absent authorization from the Fifth Circuit pursuant to 28 U.S.C. § 2244(b)(3)(A), Petitioner’s successive application must be dismissed.

SO ORDERED AND ADJUDGED this the 18th day of January, 2006.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE

¹According to the petitioner’s response [document #10], he filed an application for leave to file a successive petition which was denied on November 8, 2005. *In re Gamage*, 05-60845 (5th Cir. Nov. 8, 2005).